***

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 4163 of 2003
Date of decision: 13.11.2007

Molu Ram **...Appellant**

Versus

Raj Kumar **...Respondent**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Rajinder Goyal, Advocate for the appellant.

Mr. Rakesh Gupta, Advocate for respondent.

****

RAJESH BINDAL, J.

The present appeal arises out of judgment and decree passed by learned Additional District Judge, Kaithal whereby judgment and decree passed by learned Additional Civil Judge (Senior Division), Kaithal in a suit for possession by way of specific performance filed by the appellant/plaintiff was confirmed.

The claim set up in the suit was that respondent/defendant agreed to sell land measuring 4 kanals vide agreement dated July 9, 1992 for a total sum of Rs. 40,000/-, out of which Rs. 14,000/- was paid as earnest money. January 15, 1995 was fixed as date for execution of the sale deed. In spite of the fact that the appellant/plaintiff was present in the office of Sub-Registrar, Pundri on January 16, 1995 (January 15, 1995 being holiday), the respondent/defendant did not turn up to get the sale deed executed. When request and the notice issued to the respondent/defendant did not yield any result, the suit was filed. In defence the plea raised by respondent/defendant was that in fact the transaction in question was a loan transaction on account of sale/purchase of buffaloes and insptie of the fact that entire money due to the appellant had already been settled by way of payment by the respondent and also through Bhag Singh and Ram Kumar but still the documents got signed by the appellant, were not returned. By way of evidence led by the appellant, it had come on record that on the same

***

very day a pronote was also got signed by respondent for a sum of Rs. 14,000/- and an agreement to sell was also signed showing the earnest money as Rs. 14,000/-. Still further the period given for execution of sale deed in the agreement to sell being after nearly 2-1/2 years for such a small transaction involving a total sum of Rs. 40,000/- clearly shows that the intention of the parties was not to buy and sell the land rather it was a simple loan transaction. Still further the weakness in the evidence led by the appellant was evident from the fact that no witness to the agreement to sell was examined though alive thereby violating the mandatory provisions of Section 3 of the Transfer of Property Act. The alleged agreement does not even contain the signature of the appellant/vendee. Still further no specific date for execution of the sale deed is mentioned rather it only states that in case the respondent fails to return the borrowed money by January 15, 1995, he shall be entitled to get the sale deed executed. Meaning thereby the appellant had not been able to make out a case to prove the agreement to sell relied upon by him. On appreciation of evidence on record, the Court rightly non suited him. As far as the recovery of the money allegedly given by the appellant to the respondent is concerned, the suit filed by the appellant is not for the purpose of recovery of money as the same was plain and simple for execution of the sale deed relying upon the agreement to sell and not for recovery of money on the basis of pronote and the receipt. Once the agreement to sell itself could not be proved and production of pronote and receipt being beyond pleadings, in my opinion, even the claim for refund of money which according to the appellant had not been refunded to him as claimed by respondent, has rightly been rejected by both the Courts below.

In view of my above discussions, no substantial question of law arises in the present appeal and the same is dismissed.

November 13, 2007 **(Rajesh Bindal)**
Pka **Judge**